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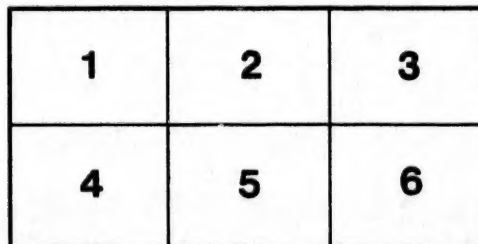
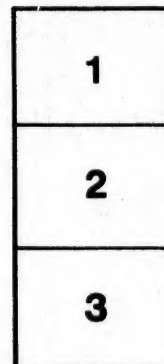
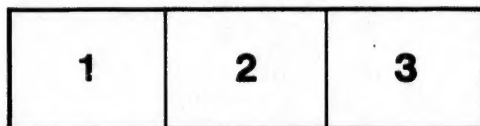
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THE
D E B A T E
IN THE
HOUSE OF COMMONS,

ON
WEDNESDAY, FEBRUARY 27. 1771,

ON
The BILL to repeal a Clause in the Act for
quieting the Possession of the Subject,

COMMONLY CALLED

The NULLUM TEMPUS ACT.
*By Sir Wm Meredith assisted by Con:
Phipps, now Lord Mulgrave, &c*

L O N D O N:

Printed for J. ALMON, opposite Burlington-
House, in Piccadilly.

MDCCLXXI.

[Price One Shilling and Six-pence.]

THE
DEBATE
IN THE
HOUSE OF COMMONS
ON

WEDNESDAY, FEBRUARY 27, 1873.

ON

The Bill to repeal a Clause in the Act for
amending the Position of the Subject.

COMMONLY CALLED

THE NULLUM TENETUS ACT.

LONDON:

Printed for J. A. Arnes, opposite Bankers,
House, in Piccadilly.

MDCCLXXIII.

[Price One Shilling and Sixpence.]

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ADVERTISEMENT.

ON Monday the 11th of February, 1771, Sir William Meredith made a motion, which was seconded by Lord Charles Spencer, for leave to bring in a bill to repeal a clause in the *Nullum Tempus* act, which allowed a year to the grantees or lessees of the Crown to prosecute their claims to effect. This motion was carried by 152 against 123.

On the 20th of the same month, the bill having been twice read, the House divided again, Whether the bill should be committed? which was carried in the affirmative by 155 against 140.

On the 27th of the same month the further consideration of the bill came on. The debate of this day, which determined the fate of the bill, is the debate here printed. For some days before this debate came on, the public papers were filled with scurrilous articles against the advocates of the bill, and the most gross misrepresentations of the state of the case between the Duke of Portland and Sir James Lowther. With what view all this was done, is not difficult to guess; and to shew that it was done, we shall give, as a specimen of the whole, the abuse of only one day, from only one paper, viz. The Public Advertiser of Tuesday February 26, 1771.

A Word

A Word to the OPPOSITION in the Lower Room.

*Discite JUSTITIAM moniti!**My Lords and Gentlemen,*

I OBSERVED on Wednesday night last how extremely *cock-a-boop* you all were on occasion of so numerous a division in support of a motion to deprive a Northern *Baronet* (by an *ex post facto* law) of a great part of his landed property; and that too at a time when the matter is *sub judice*.

How you can reconcile this conduct with the principles of justice, I cannot conceive.—Allow me only to ask you a plain question: suppose that a measure of this sort had been attempted by a MINISTER, what would have been the consequence?—It would have blown him up; it is such a flagrant act of injustice as would have overturned *any* administration.—And does a *flagrant act of injustice* change its NATURE, because it is adopted by OPPOSITION?—This would indeed be verifying the old proverb, that “it is safer for one man to steal a horse, than for another to look over a hedge.”

For shame, Gentlemen! pause but for a moment, and reflect on your present conduct.—Let not private pique and animosity to an individual so far hurry you out of your senses, as to make you overleap the bounds of justice, and give a mortal stab to the constitution.

MENTOR.

To

To the PRINTER.

SIR,

I so much hate what Shakespeare calls the *law's delay*, that I am glad to see a prospect of all laws being at an end. These tedious Courts in Westminster are beyond bearing; they examine witnesses, they pay a regard to evidence, they respect the authority of old musty deeds. Commend me to that great and upright judge Sir William Meredith and his assessors, who will, without proof, or even examination, dispatch you a cause in a few minutes. It is skip Jack and begone with them when a friend is concerned. Who the devil cares a farthing for old rolls of parchment? Usurpation is the best foundation of right; and the world, as well as the forest of Inglewood, was made for the longest sword.

SCÆVA.

To Sir JAMES LOWTHER.

I WOULD have you to know, Sir, that the justice of your cause shall avail you nothing. What right has a proud, reserved, though, perhaps, honourable man to justice? Have you not presumed to marry the daughter of that unpopular Lord whom we all hate? Have you not been uniform in your support of government against anarchy and confusion? Have you not had the imprudence to detect one *of us* in a robbery? Yet you expect to meet with justice! — Know, Sir, that you expect to *receive* what we have not to *give*. We live by injustice; we

sojourn with partiality. All our *motions* are retrograde; they are directed to our own interest; and were *every man to have his own*, poor patriotic knaves might starve.

JOSEPH SNIP, *Taylor and Patriot.*

To Sir WILLIAM MEREDITH.

DEAR KNIGHT,

HAVING a damned bad cause depending in Westminster-hall, I am under terrible apprehensions that *justice will be done*; and that I shall be disappointed in my views upon the pelf of a proud despot, whom I have singled out, as a proper person to supply my present wants. I, therefore, request of you, my dear Baronet, to remove the cause into the *proper place*; and that *you and our friends* RESOLVE the suit in my favour. Though I act not such a conspicuous part in patriotism, as his Grace of Portland, I have done some *little* service in the London Tavern; and, with all due submission, claim my small *modicum* of the spoils of our enemies.—Pray, good Sir William, would it not be highly proper to shut up, at once, all the Courts of Law? I am sure they do us no good: our business is with *injustice*, for what the devil have poor rogues to do with justice?

I am Sir William's

Most obedient,

A POOR PATRIOT.

MONDAY,

MONDAY, FEBRUARY 27, 1771.

“ The order of the day was read, for the House to resolve itself into a Committee of the whole House, upon the bill to repeal a clause in an act made in the ninth year of his present Majesty's reign, intituled, *An act to amend, and render more effectual, an act made in the twenty-first year of the reign of King James the First, intituled, An act for the general quiet of the subjects against all pretences of concealment whatsoever*, which protects such rights, titles, or claims, under any grants or letters patent from the Crown, as are prosecuted with effect within a certain time therein limited.

“ And a motion being made, and the question being put, that Mr. Speaker do now leave the chair;

“ The following debate ensued :

JEREMIAH DYSON, Esq.

MR. SPEAKER,

WE are now entering into a debate of the most solemn and serious question, that I ever remember to have been agitated in this House. For the extent of the proposition goes to this: Whether we shall suffer the law of the land to proceed in its usual and antient course, according to the known, certain, and established rules of judicature; or whether we shall interpose the authority and controul of Parliament, in order to substitute a new, unprecedented, unconstitutional mode of trial, in the room and in subversion of that, which has been founded in the policy, and confirmed by

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the wisdom of past ages, and which our ancestors hoped to have delivered down safe and inviolable to all future times: for, however gentlemen may attempt by their powers of eloquence to disguise this proposition, it is clearly this; That, in the instance of a suit now depending in the Courts below, this House shall send forth a new rule of decision, in order to oblige the Courts of Westminster-hall to decide in a different manner from what they must decide, provided no such rule was sent down to them. I affirm this to be the case, Sir, because the gentlemen who bring in this bill assume the proposition, that the Courts of Westminster-hall must of themselves decide in favour of Sir James Lowther, against the Duke of Portland; for, if they could at all rely on the justness of their cause, this bill would, in their own opinions, be unnecessary. The design then is to compel the Courts of Law to decide in favour of the Duke of Portland, which Courts, if not put under such controul, must decide in favour of Sir James Lowther. I have the strongest reason for stating the suit against the Duke of Portland, as the only foundation for the bill, because there is no other stated. On what principle of equity, justice, law, or the constitution, we can proceed on such a basis, I own, I cannot discover. I aver, that the proceeding, as far as my knowledge goes, is totally unprecedented: for although gentlemen have named one precedent, as they

they are pleased to call it, which is that of the legislature not only indemnifying persons who have neglected to qualify, but stopping such suits as are commenced on such occasions; yet I am sure no gentleman can be serious in comparing a forfeiture under a penal statute, to a civil suit commenced for a landed estate, under a right founded in common law, and prosecuted under the immediate sanction and direction of Parliament. Indeed, Sir, I wish gentlemen would consider the extensive consequences of this proceeding. For my own part, I feel myself bound in conscience, as a candid, honest, and impartial Member of Parliament, to give my vote against any further proceeding in this business, and therefore I shall dissent from the motion, that you do now leave the chair.

Honourable CONSTANTINE PHIPPS.

I SHALL, I hope, to the satisfaction of this House, prove how groundless all the objections are, that have been made to this bill: it has been treated as a breach of the faith of Parliament, a violation of justice, and an invasion of private property. Nothing more, however, is necessary to refute these groundless charges, than to examine them. I had indeed hoped, that this day's debate would have produced some fresh arguments, more worthy the attention of this House, and that these would have been

confined to their proper place, I mean the news-papers, where they have, for these three days, been industriously propagated under fictitious names, and mixed with many gross falsehoods, to prejudice the minds of the people: they have also appeared in the same company in an anonymous Case, industriously, partially, and secretly conveyed into the hands of some Members of this House, by whom, and for what purposes, I do not pretend to say, [Here he made many observations on the falsehoods and misrepresentations in the Case.] I cannot however omit this opportunity of mentioning the very different conduct of the friends of this bill. They have not filled the papers with misrepresentations of a matter depending in this House. Conscious of the merits of that cause, which they have espoused for its justice only, they have been content fairly and openly to offer their arguments in the course of two debates to the House; every man staking his character upon the veracity of his assertions, and the propriety of those motives upon which he grounds his vote. The honourable gentleman * who spoke last, having thought proper to adopt these opinions, and to enforce them with his usual ingenuity, it becomes necessary to contradict and disprove them. He tells us, Sir, it would be a breach of the faith of Parliament: because two years ago, in taking away the
nullum

* Jeremiah Dyson, Esq;

nullum tempus rights of the Crown, you gave, by this clause, a right to the grantee of the Crown to prosecute, and directed him how to proceed, that, by passing this bill, you would take away the power you then gave, and say to the grantee, "Tho' you have done what we directed, you shall not have what we promised."—To answer this, it will be necessary to state the case in more accurate and precise terms, than would have been convenient for the honourable gentleman's purpose. Parliament, as any man may see who reads this clause, did not promise any thing, or give any right; it is only a saving clause, by which Parliament left the powers of grantees open to future consideration; but it is a new idea of parliamentary faith, repugnant to every idea of legislation, to suppose that Parliament, when it does not pass an act, pledges itself never to pass it: the honourable gentleman might as well have said, because the *Nullum Tempus* Bill was thrown out the first year, it was a breach of parliamentary faith to pass it the second. My idea, Sir, of parliamentary faith is very different: it can never be engaged, but where something is given up for it. The faith of Parliament is engaged to public creditors, because they have lent their money, upon terms proposed by the legislature, which the legislature is bound to keep; and in that case, a man, who, from thinking it exorbitant, had opposed the loan,

loan, is bound in honour to vote against a repeal of that law, by which it was authorised; but it is not contended, that Sir James Lowther's consent as an individual was necessary, in this case, to have passed the act originally without this clause: Parliament had then an undoubted right to have taken away the right from the grantees as well as the Crown; but having reserved it for future consideration, they are now, it being brought before them, as much at liberty to take it away, if they shall think it expedient. The House as a body is absolutely unpledged; every individual has a right, and ought, to exercise his own judgment in the vote he shall give. There is indeed another kind of parliamentary faith, which ought to be kept very sacred; I mean the fulfilling, by the provisions in the bill, whatever is promised to the people by its title. This was intitled "An act for rendering more effectual an act of James the First, for quieting the subjects against all pretences of concealment whatsoever." A clause was inserted in this bill, not in the original act of King James, which, from two years experience, we find, has, in a great measure, defeated the intention of the act. The faith of Parliament will indeed be broken, if we obstinately adhere to what we inadvertently passed, by supporting a clause which gives the lye to the title of the act. The people, who see the quiet that was promised not obtained, will have reason

reason to believe that it was never intended, should the bill now offered for repealing the the clause be rejected. To prove that it is a violation of justice, we are told, " This " bill is to give a direction to a Court of " Law, in the case of a particular person, " which will oblige them to decide by a " different rule from what they must otherwise do, and that it is an *ex post facto* " law." Now, Sir, let us see how this charge will stand: The clause proposed to be repealed might have been necessary in some cases: A person long possessed of a crown-lease might have omitted to prosecute some encroachers upon his property, from knowing that no prescription could bar him: if from any considerations of convenience he had suffered his claims to sleep, it would have been unjust to preclude him without any warning from asserting his right. No such grantee has availed himself of this clause, but a grantee of a very different kind has; one who has obtained a grant of an estate in the possession of another man, upon the suggestion of a supposed defect in that title. If therefore this bill will only decide one cause, it is because only one such cause exists; I mean the cause of one grantee against many possessors. The provision is general; but if only one man has brought himself under this description, is it a reason why that man should be suffered to avail himself of this inadvertency

inadvertency of Parliament to the injury of of the quiet subject? But, Sir, this is not, as it is represented, a bill to give a direction to a Court of Law to determine a particular cause; it is to prevent a title by sixty years possession being canvassed upon any other ground in a Court of Law. Those, who think the Duke of Portland equally intitled, with every other subject, to the protection of Parliament, will consent by this act to extend that protection to his property, which the opposers of this bill admit is already afforded to every other man's. Those, on the other hand, who think the Duke of Portland alone should be left to be oppressed, harrassed, and plundered, under the colour of a law, now in every other case obsolete, and reprobated by Parliament, will vote against the bill. To deter gentlemen from agreeing to this bill, it has been called an *ex post facto* law: such a law in criminal cases (which is the general acceptation of the expression) is indeed justly alarming and odious, because it makes an action, innocent at the time it was done, criminal by a subsequent act, and makes the actor liable to a punishment he could not be aware of at the time he did the act, and consequently could not be deterred by. But why is this so alarming? Because it makes the unwary subject the object of prosecution and oppression, for something he could not know he had acted wrong in. But there

is another kind of *ex post facto* law, which has ever been deemed as advantageous, as the other is injurious to the subject: I mean laws for the redress of grievances, which must necessarily be *ex post facto*, since no grievance *can* be redressed before it has been felt. This bill is calculated to redress a grievance; in that light, and in that only, it is an *ex post facto* law. The honourable gentleman has called upon us to support by precedents this invasion of property (as he terms it): he tells us, none have occurred to him; but one has been brought in this case in a former debate; that of the indemnifying bill, which now lies upon the table to be passed, taking away the penalty from a common informer, *vested in him by law*; which, he tells us, is no way applicable to the present case; he has not, however, shewn us wherein they differ. I will shew in what they are alike, and doubt not of proving to the House, that the situations of the two kinds of informers are more similar, than the two kinds of *ex post facto* laws, which he has endeavoured to confound. A penal statute makes men liable to a certain penalty for omitting to do certain things *by law directed*; and vests the property of that penalty in any informer, who shall enforce the law against the delinquent, by strictly following the directions of that act, as a reward for his diligence in *discovering* the breach of that law. The indemnify-

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ing act takes away from the informer *this* property *so vested in him by law*, tho' he has complied with the directions of the act, and actually obtained a verdict, and restores to the delinquent *that* property, which, under the former act, he had forfeited by non-observance of the law. In this case, the legislature, determining that the omission shall not be punished, takes away the reward from the informer, which was only given for the discovery of those omissions. What is the case of the informer of concealments? *No law, but the custom of office*, has given a beneficial lease of any property, which shall be suggested to belong to the Crown, in consequence of any deficiency of title in the actual possessor, though for upwards of sixty years, as a bribe to informers to rake into the title of their neighbours, and discover informalities and defects by which the Crown may reap advantage. The legislature, justly abhorring this odious and oppressive principle, have (as they in the penal case remitted the punishment) enacted, that the Crown shall not avail itself, to the prejudice of the subject, of any such defect; but that sixty years possession shall be as good a title against the Crown, as it was before against the subject: where then is the injustice of taking away from the informer that reward, which was only held out as an inducement to him to do that which you declare shall not be done?

done? Is that man more the innocent object of parliamentary protection, who has omitted, however inadvertently, to comply with the directions of a law, which he might know because it is public, than he, who, resting secure in long hereditary undisturbed possession upon the credit of his ancestors, the tacit evidence of his neighbours, and the Crown, whose right alone can be invaded; when this possessor has not even a possibility of knowing the defects of his title, because he has not access to the papers that are to point out such defects? or is that man less the object of parliamentary faith, who, from interested motives, becomes the servant of the legislature, and proves a breach of the law, than he, who, from motives as avaricious, becomes the *tool* of office, to question the rights of an unsuspecting owner? However this precedent, strong as it is, is not the only one. The very statute of King James, and every quieting bill that ever passed, have taken away the claims of grantees so circumstanced; and Lord Coke, in his reading on that statute, mentions it as one of its greatest merits, that it protected the subject against that *turbidum genus hominum*.—My Lord Coke, in his fourth Institute, mentions another case strongly in point. Some of these informers had obtained a grant from the Crown of a possession always reputed to belong to the Bishop of Norwich. The

Bishop had taken a lease of this from the grantee, by a friend of his, one Hammond : Lord Coke, then Attorney-General, much misliking this, as he expresses it, prevailed on the Bishop, that an act of parliament should pass to secure this possession to the bishoprick. The House is, I hope, convinced, that the object of this bill is not to violate, but fulfill the faith of parliament ; not to obstruct, but support justice ; not to invade, but to secure the property of the subject. The only question is, whether, by rejecting this bill, you will support and countenance informers ; a race of men hardly to be tolerated, certainly not encouraged or favoured, in a free state ;—or, by passing it, secure that right which is the most honourable, and the most justly and universally favoured by the common law ; a right founded in long hereditary, undisturbed, *bona fide* possession."

Honourable Mr. VANE.

I RISE, Sir, to give my dissent to the motion that has been made for you to leave the chair, because I think it my duty, as an honest man, and true representative of the people, to oppose every step in every stage of proceeding, which, I am firmly of opinion, is a violation of the rights of the

the people, a breach of parliamentary faith, and an overturning of the jurisdiction of the law. This proceeding, Mr. Speaker, had its commencement in rage and in tyranny; it was founded in the hope of bearing down the right and title of an honourable person, who asks no favour, but the equal and unbiassed judgment of the law; who does not resort to the law, but under the faith and direction of an act of parliament recently given. With what justice, what decency, can we annihilate the claim, that we ourselves have ratified? How can this parliament take away from Sir James Lowther that very right, which this very parliament has directed Sir James Lowther to maintain? For when parliament gave Sir James Lowther an authority to commence a suit, that authority can bear no construction, but that of a command so to do. And he was bound to prosecute his right, not for his own sake, but on account of the public, to which the estate in question will devolve, as soon as Sir James Lowther's grant expires.—Surely, then, I may apply the expression of our great poet on this occasion: for, since it was by our own command that Sir James Lowther began his suit,

“ ’Twould be our tyranny to strike and gall him

“ For what we bid him do.”——

But I, Sir, take up this question on higher ground than that of personal consideration. I think it the cause of common justice,

justice, common security, and public liberty; for I know no protection by which any man can hold his property, or live in freedom, but under the line and barrier of the law: if that is taken away, or overpowered, every thing is left in common to the will of a tyrant, or the fury of the multitude. To undermine, or to subvert the law, is the language, the principle, the act of despotism. I am sorry to see, that this principle of despotism has carried us so far already; I earnestly hope it will carry us no farther; but that we shall leave this cause where it now is, to be determined in the courts of law, according to the rules and principles of law.

MR. SEYMOUR.

I AGREE with every one of those gentlemen, who think, that the rule of law is that very rule, which ought to guide our conduct, and to sway our consciences, in the question now before us. It is therefore necessary only to state what the *law* is. For, thank God, it is not a point of law that lies buried in the confusion of chicanery and mysteries; it is a law that every man is acquainted with, who knows he has any thing that he can call his own. For I know, and we all know, that every man who has held an estate for the space of sixty years,

years, without molestation, cannot, by the common law, be disturbed in his possession. The question before us is merely this, Whether an individual (I may name him, the Duke of Portland) shall be singled out by the Ministers of the Crown, to have an estate taken from him by the renewal of a dormant power of the Crown? which I cannot allow to have been *law*, because it counteracts that rule and principle of law, by which we are all protected in those inheritances which our ancestors have bequeathed to us. I hardly know what gentlemen mean, when they deny the right of parliament to alter the common law; because every statute that lies upon your table is either an alteration, or amendment, or inforcement of the common law. We do our duty to the public, as often as we pass such acts as give redress, where the law has denied it; and as often as we put a stop to the abuse of power, where the common law is not able to restrain it. Our judgments, when they contradict the law, I grant, are arbitrary; when they are conformable to law, they are just, equitable, and favourable to liberty. I therefore agree to the motion, that you, Sir, do now leave the chair.

Serjeant LEIGH.

I RISE to give my testimony to the fairness of the manner, in which an honour-

able gentleman *, who sits below me, has stated this question. He has put it, I think, on the fairest issue imaginable: for he says, that whoever thinks this cause unfit to be tried by the courts below, will agree to the motion; whoever thinks it fit and proper for the courts of Westminster to decide this cause, as it is referred to them, will dissent from the motion, that you do now leave the chair.

I am free most cordially to declare, that had I been possessed of a seat in this House when the bill passed, I should have opposed the insertion of this clause. No man shall hear me adopt such a principle as that of excluding a man from the benefit of a general law; much less could I have made a nobleman of the Duke of Portland's character the object of such an exclusion.

But I have the concern to see, that parliament *has* excluded the Duke of Portland from the benefit of that act. Was it from inadvertency, from misapprehension, from ignorance in point of fact, or error in judgment? Certainly no. The Duke of Portland's case in general was so much in the contemplation of the House, that it even gave rise to the bill. Was it from want of being informed of the precise situation in which the clause placed the Duke of Portland? Nothing like it. The clause was shewn, approved of, and consented to by the counsel who managed his cause, who

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* Mr. Dyson.

knew most intimately the conditions of his grant, and who acted on this occasion not so much in the way of their profession, as in friendship to his Grace. Was it unknown to the Duke, or could he be imposed on in the nature and conduct of the transaction? The character of the gentlemen concerned forbid one supposition, and the good sense and wisdom of his Grace destroy the other. The clause was then more than consented to; it was approved by his Grace and all his friends; and under this very clause did the suit commence.

Under what pretence then can I now vote for removing a cause from its proper judicature, in which the legislature itself has placed it? Are the courts incompetent to try the cause? It cannot be suggested. Is any violence, injustice, or partiality, to be apprehended? No, Sir, it would be unjust to form an apprehension of this nature. Indeed, Sir, if this clause was as extensive in its consequences, as when it first passed, perhaps I might now think myself at liberty to vote for the repeal, and consent to an intrusion upon the jurisdiction of the common law, by taking this suit out of the course of trial, to obtain the benefit of future security to the subject, from the unhappy consequences of this clause. But the time allowed by the clause under your consideration, for bringing such suits, having elapsed, renders a *future* oppression under this act im-

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possible;

possible; and the offer made by Sir James Lowther in his place, to withdraw all other suits, removes the objection arising from a fear of *present* oppression. It is upon these grounds that I refuse to the Duke of Portland alone that relief, which, I confess, I would gladly extend to him with others; and tho' this bill bears upon the face of it the appearance of a *general* remedy, I think it best, however reluctantly, to sacrifice the interest of his Grace, lest this bill going down to posterity, joined to his amiable character, should be mistaken for an act of partiality rather than justice, and become a dangerous precedent for an interference with the course of justice, upon less honourable motives, and a less plausible occasion. 'Tis for these reasons, Sir, that I shall give my vote against your leaving the chair.

MR. CORNWALL.

THE learned Serjeant, who spoke last, has with great clearness expressed his reasons for dissenting from the repeal of the clause, that is now under the consideration of this House. But his objections go no further back than the commencement of the suit, in consequence of a grant made to Sir James Lowther of an estate which the Duke of Portland's family have had possession of near seventy years. But my principles carry me further back than the institution of the suit
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—my objection is to the grant itself; and if I think that grant oppressive, injurious, or tyrannous, I cannot, as far as my voice goes, consent to lengthen its existence one moment: whatever is built on such a ruinous and bad foundation, ought to be instantly pulled down.

The grant was made on a revival of an abominable principle, that *nullum tempus occurrit regi*. I don't mean to flatter either the gentleman who obtained the grant, or those who made it—I don't think the motives for soliciting it can be justified by any man in a cool moment—I think the reasons for granting it unpardonable at any time. It was solicited, during the heat of an election, for the purpose of carrying on that election; it was granted, upon a supposed necessity of supporting the claims of the Crown. I don't think it a credit to any servant of the Crown to be tenacious of such a prerogative. Had I had the honour to have been at the Treasury Board, so far from giving my countenance and assistance to any grant in support of the principles of the *nullum tempus* claim of the Crown, I should have thought I had discharged my duty more agreeably to my gracious Master, and more like a faithful steward for the Public, by discouraging such claims, and discountenancing every informer that attempted to avail himself of them.—The property of the Crown is

the property of the Public—that property is only valuable, as it is a part of the interest of the Public—The interest of the Public is, that the subject should be quiet, and look up to the Crown with confidence for protection, and not dread to feel from it the hand of oppression. What can be more unnatural and repugnant to the principles of a free government, than the exercise of a power, which vests in the Crown an exclusive right of disturbing the ancient possessions of the subject, not only for its own emolument, but to gratify the rapacity or revenge (I mean not to point this to the present instance, I mean the reverse) of an unworthy individual, at the expence of, perhaps, the most meritorious and virtuous member of the community. Yet such is the power claimed by the *nullum tempus* right, in its utmost extent. I confess, had I been for a partial repeal, the part exempted by this clause is that I should be most solicitous to destroy; as I think much more vexation is to be dreaded from the passions and interests of individuals, than the necessities of the state. As to the Duke of Portland himself, he is not only entitled to the protection, he deserves the thanks of the public, for generously consenting to wave the immediate possession of that security, which, in common with every other subject, he had his right to. He was contented that his rights should sleep, lest they should be
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a motive in the mind of any one man to clog so salutary a bill, and universal a benefit. I think therefore, as his case is now before you, that Parliament is bound in honour to defend him from that persecution, from which it was his first object to redeem others, before he would attempt to preserve himself.

Lord NORTH.

THE honourable gentleman * has at last revived in my memory a grant, which passed since I had the honour of holding the seal of the Exchequer, and which seal I am proud to own was affixed by *me* to the grant in question. This he calls an abominable act: but in the situation I then was, and still am, I thought myself bound to pass it by every principle of duty to the Crown, as the servant of the Crown, and bound still more strongly by that duty which I owe to the Public, as steward of the public estate, as far as it is intrusted to me.—It is my glory that I passed the grant; and as often as mention of it is made, so often shall I think that honour imputed to me. The honourable gentleman †, who introduced this bill, spoke in a very different language.—He opened his proposition with great politeness, great candor, and in a manner

* Mr. Cornwall. † Sir William Meredith.

manner entirely worthy of himself; but he will forgive me if I own, after such an introduction, it surprised me the more, to find his conclusion to point at what I hardly conceive he will persist in, a violation of private right, an utter perversion of law and justice, and a breach of parliamentary faith.—Sure I am, Sir, the honourable gentleman would have thought no terms too severe, had such a bill been advised or moved by Administration; but gentlemen in opposition are sometimes apt to run lengths, that men in office would shrink from. But, Sir, whatever might be the ground of an intention to bring in this bill, that ground now is entirely removed.—The honourable gentleman, to whom the grant was given, has behaved in the noblest manner, a manner that must do him honour, not only in the breast of every ingenuous man, but that must extort admiration and praise from the mouth of enmity itself.

There were, it seems, many persons who had inclosed lands under the faith of of several acts of parliament obtained by the Portland family; who, as they thought their titles were good, might have been exceedingly distressed, had not the goodness of Sir James Lowther relieved them. But there is no person remaining now, against whom any suit is commenced, but the Duke of Portland; and surely, Sir, the Duke

Duke of Portland is no object of pity.—Therefore, even in the feelings of men, there can be no objection, why justice should not run her course in respect of the Duke of Portland only.—But such is the fate of condescension and acquiescence, that no sooner had the honourable gentleman made the concession, than an advantage is immediately taken against him of his own bounty, and it is asked, why is the Duke of Portland to be alone excepted? All I can answer is, that justice must have taken her course in respect to all, had not Sir James Lowther himself exempted such as his humanity pointed out. But it is the strangest argument I ever heard, that, because a gentleman had the generosity to give away a part, therefore the rest shall be forced from him. It has been insinuated, indeed, that the honourable gentleman did not offer to make these exemptions, till after notice was given of bringing in the bill.—Sir, it is no business of mine to inquire, *when* the offer was made.—All I desire to know is, what I do know, that they owe their quiet to the liberality of Sir James Lowther; and the event of this day will prove, that, had it not been for his liberality, they had been the real objects of pity, which these gentlemen have laboured to convince the House the affluent Duke of Portland is.—But, surely, Sir! such an object of *pity* as the

Duke of Portland, with all his vast hereditary, undisputed possessions, was never held up to influence the passions, against the justice of the House. No, Sir! this House never will, for the sake of pity, in a real case, put itself in the scandalous situation of a parliament that can break its faith. No, Sir! the faith of parliament, which was kept inviolate to Sir Richard Brook last year, notwithstanding the efforts of a powerful, beloved, and noble connexion, will this year be held sacred with Sir James Lowther. There is no difference in the circumstances of the two cases, none in the characters of the two gentlemen, to induce us to make so injurious a distinction, and, let me add, so disgraceful to this House, was it to take place.

Lord JOHN CAVENDISH.

THE subject that is now before you is of a nature that makes me extremely unwilling to speak a word upon it; but there can be no situation, which obliges a man to silence, when justice requires him to speak.—That justice impels me now to inform the House, that there is a young lady, near in blood, and dear in affection to me, to whom I am a guardian, who has this very estate in question settled upon her

her in part of her jointure: if then it has been pleaded for those, who, it seems, are already exempted, that their ignorance of any defect in their titles should entitle them to protection; sure I am, that the Duke of Portland, had he not been in ignorance that the estate, which his family has possessed for so many generations, was liable to be torn from him by a grant; and that the able and upright lawyers, who drew up the settlement, had not been in equal ignorance; the Duke would never have offered, nor they accepted the estate, as part of her jointure, or included it in the settlement made upon her son.

Governor JOHNSTON.

I HAVE heard with indignation, rather than surprise, the arguments that have been used, in support of a measure, the most violent, arbitrary, and unjust, that ever was proposed to parliament. I therefore said, Sir, I was not surprised; even though I have heard the bill supported by allegations, as false in fact, as the end proposed is unjust. It has been treated, as if the property in question was the estate of the Duke of Portland; and Sir James Lowther the invader of his estate. Sir, I deny that the Duke of Portland ever was the legal owner: I have the best authority to affirm, his Grace never had a right by law, and

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that Sir James Lowther's grant is strictly according to law : I therefore submit it to the understanding of every man present, whether he is the right owner who has a legal title, or he who has no title at all ? If the Duke of Portland has so just a right as is pretended, why is he so afraid of trying of it ? Why has he pleaded privilege ? Why has he used every artifice to gain time, perplex, and also draw the pity of the public ? I suppose the noble Lord, who spoke last *, mentioned the case of an innocent Lady, to draw the compassion of the House ; but I can assure the noble Lord (for I am authorized to say so) that Sir James Lowther is as ready and as willing to make a recompence to the Dutches of Portland, as to the other persons who may be supposed to have escaped the view of the legislature when the bill passed ; and who are so nobly exempted from all further prosecution by Sir James Lowther ; but whose bounty and magnificence on this occasion have been most ungenerously turned against him in favour of the Duke of Portland.

It has been said, among other falsehoods, that Sir James Lowther applied for this grant, in order to influence the Cumberland election. That falsehood has been refuted by the honourable gentleman in his place, who has solemnly declared, that no regard to the Cumberland election governed him

* Lord John Cavendish.

him in the least. Hearing it from my honourable friend's own mouth, it is impossible to doubt the truth of what he has said. All the world must now believe, that Sir James Lowther had no view to the election, when he solicited the grant. It was the defence of his own property that induced him to apply to the Crown. For the Duke of Portland, not content with usurping the estate of the Crown, could not rest without attempting to usurp the property of others, by virtue of his pretended grant. For he filed bills in Chancery against Sir James Lowther and the Corporation of Carlisle, in order to take from them the fishery of the river Eden; though Sir James Lowther's family have enjoyed the said fishery ever since the reign of Edward the First, and the Corporation have had theirs for centuries back. With what justice or truth, then, can Sir James Lowther be said to invade the ancient property of the Duke of Portland? when all he does is in defence of a most ancient property of his own, against the attacks of a new man in that count: for I will venture to say, that the ancestors of Sir James Lowther had noble possessions there, many hundred years before the name of the Duke of Portland was known or heard of in the kingdom of Great-Britain. But all that my honourable friend asks, is a fair trial at law; and whether he

that wishes to avoid the law, or he that desires to be tried by the law, has the better cause, I submit to the judgment of the House.

Counsellor WALLACE.

I HAVE heard the question treated as an intrusion upon the judicature of common law, for which gentlemen have assigned this reason, that, as it is already referred to the decision of the Courts below, we should usurp their authority, and controul their jurisdiction, were we now to stop the suits that are commenced. But every gentleman of my profession knows, that it is the frequent practice of the Court of Chancery to dismiss suits, when there appears just reason why they should proceed no farther in them. In the present instance, the Courts below are bound to proceed in the suit now under our consideration; the legislature only can stop its progress; the legislature is therefore applied to in this case, as almost in every other, to do what the common law, without the aid of parliament, cannot do. The point, therefore, for *us* to consider is, whether the common law, on those general principles on which it acts, would entertain this suit? Certainly not, Sir! it is trespassing upon the patience of the House to repeat it, that *no Court can entertain a suit against an uninterrupted possession of sixty years.*

years. But it is said, that this clause does not give Sir James Lowther any power, except against the Duke of Portland: but Sir James Lowther has instituted suits against two hundred persons at least, who are no way concerned with the Duke of Portland; and, as I am informed, some of those persons have given up their estates, rather than contest them.

It is said, Sir, that the Duke of Portland has pleaded his privilege against Sir James Lowther; that I deny. It is also said the Duke of Portland has attempted to take away from Sir James Lowther, and the Corporation of Carlisle, their fishery of the river Eden. Sir, the Duke of Portland has attempted no such thing; he has never questioned the right, either of Sir James Lowther, or the Corporation of Carlisle.

The case is this: The Duke of Portland had a valuable fishery on the river Eden; betwixt this fishery and the sea, Sir James Lowther and the Corporation of Carlisle have also fisheries. But by a new mode of fishing, which is to lay fishing-nets quite across the river, they have intercepted all the fish from running into the Duke of Portland's part of the river; so that it is useless, and of no value. But all that the Duke of Portland has done, is, to file a bill in Chancery for permission to record the testimony of antient persons, who remember
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what the methods of fishing were before these nets were invented, and this new mode practised: this is all the Duke of Portland has done. It has been often said in this debate, that we have no precedent for stopping a law-suit in the midst of its course. Sir, the annual bill that we pass, both for preventing and stopping suits, and neglecting to qualify, is a precedent in point; I am persuaded there are an hundred more in your statute-book. But, Sir, if a man takes an office, civil or military or ecclesiastical, and neglects to take the oaths and the sacrament within a certain time, he is to forfeit 500*l.* to the informer. In that case it is not a cause of a doubtful nature, that a jury may decide upon one way or another; it is a certain specific sum, enacted and declared by parliament to be the right of him who lays and prosecutes the information. A bill for this purpose now lies upon your table; but any gentleman would, I believe, be laughed at, who was to use such an argument against the bill, as to say, that by stopping the information he should rob the informer of 500*l.* The only difference I perceive in the two cases is, that poverty and distress might induce a man to inform in one case; but no such motives can be applied to the case in question.

Honourable

Honourable CHARLES FOX.

I take great shame to myself, that I have not risen sooner to declare my sentiments on this important question; for I think it disgraceful in any man to sit silent on such an occasion, who ever had the use or faculty of speaking in this House: but, Sir, my silence was owing to my astonishment; I was confounded, I was amazed! for though I saw this bill at first in the same light in which I behold it now; yet, when I looked round me, and saw who the honourable gentlemen are who introduced it; that they are men of character, men of abilities, men of knowledge, men of reputed integrity; I hesitated, I strove to persuade myself, that I must rather be mistaken myself, than that any thing so bad, so violent, so lawless, so monstrous, could be advanced by such men who proposed this bill. But I could not long remain undecided; I soon beheld the proposition in all its naked, genuine deformity: then, Sir, as I was at first struck dumb with astonishment, I was seized with horror and indignation. Who, Sir, that has a conscience to revere justice, a sense of liberty, or a regard for the constitution, can listen, without feeling an honest zeal to defeat a proposition, which, at one blow, destroys our
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constitution,

constitution, our liberty, and our laws? Gentlemen are loud in their clamours against ministerial influence. I avow the systematic support of that minister in all his measures, who has my good opinion and confidence; but that minister shall never have my assistance and support, who shall dare to propose what these gentlemen, who are so proud of their opposition to ministers, now propose. Mr. Speaker, it is under the law that every man holds his property, and enjoys his liberty in security and ease. But I firmly believe, as far as I am informed, that no man can have a better title to his estate, than the very title which the Crown has vested in Sir James Lowther to the estate in question. If *that* title is to be taken away by act of parliament, why not bring an act to take away any other part of his estate? Why not of another man's? For, if bills are thus to pass for transferring the property of one man to another, there can be nothing sacred, nothing secure amongst us. I wish, therefore, Sir, the gentlemen who brought in this bill, would, for their honour's sake, withdraw it. I am sure my conscience would never suffer me to be at rest, was I to perpetrate the injustice intended by this bill. As to myself, the same conscience, which dictates my present opposition, shall carry me on to oppose the bill in every step, through every stage.

But

But if it succeeds here, it cannot succeed elsewhere. I do therefore again deprecate the honour and justice of this House, that we may not suffer the scandal of passing this bill to lie at our doors, and give the honour of rejecting it to the other House of parliament.

Sir GEORGE SAVILE.

I AM extremely obliged to the candour of those gentlemen, who have bestowed on me so much more praise than I deserve, in the part I had the honour to take, in bringing in a bill for the general quiet of the subject, which the House thought proper to pass three years ago: but I own that I do not feel myself much elated by it. However grateful for their praises, to say truth, I am the more humiliated at having received them, being so soon to lose them; for I observe, that the same gentlemen, who have flattered me so much with their commendations for what I *have* done, think no name too bad for those who may give the same vote, that I shall probably give on the question before us.

Perhaps, Sir, if nobody but myself was in question, I might rest contented under the censure in one scale, so balanced by applause in the other. But there is another person (Sir Anthony Abdy) to whom much

the greater part of the praise, bestowed on *me*, is due; and who, if he was present, would not, I believe, be ashamed to share any disgrace that may fall on *me*: He is, unfortunately for himself and the House, confined at home. I am doubly unhappy in his absence, as he would do much more justice to his own sentiments than I can by relating them. But we have talked the matter over; our memories correspond to the fact pretty nearly, and our inferences do not differ much.

First of all I desire to disclaim, for myself and my colleague, every imputation that we ever thought the Duke of Portland ought to be debarred for ever from applying again for that justice, which we think was violated in the clause by which he was proscribed.

Let me, however, suppose, that a conversation of this sort might have happened during the course of the bill. Suppose somebody should say to the Duke of Portland, "Here is a bill for the general quiet and protection of the subject; but, unluckily for the bill, your Grace is to be protected by it; which is thought so unjust and so unreasonable, that the bill may probably be lost, unless your Grace will consent to wave your right to that common protection which every man is to derive from it." Well then, the person thus questioned is the Duke of Portland, and the Duke

Duke of Portland must necessarily answer for himself: the Duke of Portland, therefore, could only say, " God forbid that my private interest should stand in competition with that of the public: let my cause be separated; let the public be answered in the first instance; perhaps in some future day the ear of justice may be opened to my cause; perhaps Parliament may not persist in proscribing me and my family for ever."

I believe, Sir, I shall explain my meaning by a fable better than by argument. Suppose then a boat, with all her crew, should be cast away upon some barren rock, which yielded not a grain of subsistence, and their provisions were consumed to the last morsel; they must put out again to sea, or else starve upon the rock; they put out to sea, but they find their boat had suffered much in the storm, was become leaky, and in danger of being overset, by having too many men on board: the pilot is, however, of opinion, that if they had *just one man less* the boat might possibly be saved: one would naturally suppose a dispute must arise, who that *one* man should be; but there happened to be one man on board ready to offer himself a sacrifice for all; they put him on shore, and leave him exposed upon the rock. Now, Sir, should the crew once find themselves out of danger, ought they to abandon the *man*

who *saved* them, or ought they to put back to save *him*, to whom they owed their own preservation ?

SIR WILLIAM MEREDITH.

THE peculiar situation in which I stand in this question, will, I trust, entitle me to the indulgence of the House, if I once more presume to trouble you. Partiality to an individual, in subversion of law and justice ; invasion of private rights, secured by the faith of parliament ; together with every other name and epithet that can be given to violence and injustice, have been ascribed to those who introduced, and who support this bill. It becomes me therefore to state, as I will do fully and fairly, the grounds on which I have acted ; and also examine the truth and justness of those gentlemen, who have taken a contrary part ; whose consciences would *seem* to have been so exceedingly agitated, and who have been so liberal of their invectives during the course of the whole debate. And though I cordially adopt every sentiment that fell from an honourable friend of mine *, who spoke second in the debate, yet he will forgive me, if I lament that he took so much notice of those indecent and abusive publications, some of which have been handed about privately, and others circulated

* Hon. Constantine Phipps.

circulated by the news-papers. As to myself, I have so long and so often borne the efforts of ineffectual calumny, that I am quite indifferent about them. I hope it will not be an unbecoming vanity in me to say,

“ That I am arm'd so strong in honesty,
 “ That they pass by me as the idle wind,
 “ Which I regard not.”

But still, Sir, I cannot be insensible to the reproach of such persons as are near and dear to me; and I own it affected me deeply, to hear from an honourable gentleman*, whose friendship and good opinion are above all things valuable to me, that this proceeding was commenced in rage and tyranny, and that nothing could crown it with success, but perseverance in a spirit of despotism, which, he hoped, would either be changed or overcome, before the bill can pass into a law. As to the *rage* which my friend attributes, had any other person charged me with it, I should have appealed to him as a witness of the *same temper* in private, which this House has seen in my public demeanor through this business. I shall speak to the tyranny by-and-by. My honourable friend thinks, that, as Sir James Lowther was authorized to prosecute the suit he has commenced under an act of parliament, he has done

* Mr. Frederick Vane.

no more than obey that authority; and therefore he applies a passage in an author, whom we all admire and so often quote:

“ We . . . be tyranny to strike and gall him
“ For what we *bid* him do.”

Mr. Speaker, the *Nullum Tempus* bill, that we passed three years ago, took from the Crown the power of disquieting hereafter possessions of sixty years, but reserved a power of *prosecuting suits to effect within the year*. Of this power Sir James Lowther has alone availed himself; but, in my sense of things, that honourable person would have shewn his obedience to parliament, by desisting from his pursuit, much better than by taking a momentary advantage to disturb a possession of sixty years, which parliament has condemned, and annihilated the power to attempt in any future time. But had my honourable friend stated the whole sentence he quoted, I believe we should not differ in our application of it. It runs thus:

“ ’Twould be my tyranny to strike and gall ’em
“ For what I bid them do. For we bid this,
“ When *evil deeds* have their permissive pass,
“ And not their punishment.”

What then is the *evil deed* that has been done? Is it not the tyrannous and odious grant, by which the county of Cumberland has been so disquieted? I admit, I aver, that
Parliament,

Parliament, instead of allowing its permissive pass, ought to have punished the Minister that made the grant. But where the tyranny lies of stopping its further progress, I am at a loss to conceive. Will my honourable friend permit me now to refer him to the fable and the moral of that excellent play (Measure for Measure) from whence he took his quotation? The story is of an old, absurd, obsolete law being revived, and an amiable young nobleman condemned to die by it. The great poet never tried his genius more, than in uniting all the vile and detestable qualities that human nature is capable of, in order to draw the character of a minister capable of reviving and executing such a law. Let my honourable friend next turn his recollection to that part where poetic justice closes the last scene. There he will see what the decision of virtue, reason, and mercy was, on the execution of that antiquated law. Did the wise and gracious prince of that drama suffer it to take its course, and destroy an innocent man? No, he saved and protected him; but assigned over the execrable minister, who revived and would have enforced the law, to punishment, remorse, and shame. Now let my honourable friend apply his fable to the history of this day. The law of the land has ordained, that an uninterrupted possession of sixty years shall be a bar to

every possible claim of subject against subject. But there was an old obsolete law, a wretched remnant of tyranny, that said *Nullum tempus occurrit regi*. This law was attempted to be revived in the reign of James the First, but the attempt was stopt at the out-set by act of parliament. For one hundred and sixty years it has lain dormant, till a few years ago, when, together with every principle, policy, and maxim of that reign, this law was revived also. Here do I rest the merits of this question. I contend for that rule of law which, after sixty years uninterrupted possession, estates the owner in an unquestionable right. My honourable friend contends for that *rule of government*, which gives to length of possession no security against the claims of the Crown. Which then is the side of despotism; which that of law, liberty, and justice, let God, and every rational being, judge betwixt us.

A noble Lord *, who spoke lately, has condescended to make me a compliment of having introduced this bill with politeness, candour, and personal attentions: He has been pleased to return my compliment by charging me with injustice, violence, and breach of parliamentary faith. He asks, why is the same parliament, that kept its faith with Sir Richard Brook last year, to
break

* Lord North,

break its faith with Sir James Lowther this year?

Mr. Speaker, in the case of Sir Richard Brook, I presumed to take a more active part than perhaps became me. Sir Richard Brook consented that the Duke of Bridgewater should carry his canal through his estate, on condition of keeping at a certain distance from his house and gardens. The Duke of Bridgewater presented a petition to enable him to come nearer his house than the agreement allowed, and to cut through his garden. I denied the right of parliament to break that agreement, without Sir Richard Brook's consent: I opposed the motion for subjecting this point to be litigated in a committee, and decided by the evidence of Mr. Brindley. I then stood, as I now stand, in defence of ancient property against the attack of power.

The noble Lord having attributed injustice to me, I am happy that he has given us his own idea of justice.

He has told us, that Sir James Lowther, in his magnanimity of mind, has exempted from prosecution all those that are objects of pity; and therefore we ought still to suffer the Duke of Portland to be persecuted, because he is not to be pitied. Is *this* then the noble Lord's idea, and *this* his language of justice, that *he*, who is no object of pity, is no object of justice? Let me ask the noble Lord, if there is more than one defini-

inition of justice? and if *equality* is not that definition? May I again ask the noble Lord, what it is to single out one man, and to cut him off from the common benefit and protection of the law? Is it not proscription? And is proscription justice? Or is it not injustice in the extreme? Is not the principle of proscription *that*, which can never be generated, but in the darkest, deepest, foulest abyss of tyranny?

The noble Lord also says, it is a *breach of parliamentary faith*, to break through the law that we passed so lately. The people will indeed say to us:

“ Be these juggling friends no more believed,

“ Who palter with us in a double sense,

“ Who keep the word of promise to our ear,

“ And break it to our hope.”

Well, indeed, might the people of Cumberland apply these lines to us, when we passed an act, with a title that promised *quiet*, and whose provisions exposed them to destruction. But does the noble Lord remember, who gave the example of altering the bill? It was the late Attorney General this very session; who sat on the noble Lord's right hand, and, under his countenance and assistance, brought in a bill for enlarging the term, to enable the Crown to prosecute the occupants of a number of houses in the Savoy. If the noble Lord thought the faith of parliament pledged to maintain

maintain the act inviolable, why did he assent to break through it, in order to prosecute the inhabitants of the Savoy beyond the time as limited by the act? Surely the noble Lord must flatter himself with supposing, that the system of despotism (which I wish to believe his Lordship is *not* intrusted to execute) is already in a state of maturity and perfection, and that we have made a compleat surrender of ourselves, if he can expect us to acknowledge, that it is a breach of parliamentary faith to narrow the powers of the Crown in favour of the subject, and *no* breach of faith to *enlarge* those powers *against* the subject.

The learned Serjeant * who sits behind me, spoke with great candour, and was followed by that attention which his personal abilities and professional character deserve:—But he rests his argument chiefly on the danger that private property may incur, by stopping a suit now in its progress through the Courts, for which, he says, there is no precedent. I shall speak to the precedent by-and-by; but the learned gentleman, I think, is mistaken, in stating the interest of his profession, as the interest of the public. I grant the profession will be a loser, by stopping a law-suit, which, at its very commencement, has cost one of the parties 4000*l*. But the public is neither interested in the commencement, progress,

* Serjeant Leigh

nor issue of a law-suit, as it respects individuals. The interest which the public has in the administration of justice, consists in the general security and protection that we derive from it; and it is that very principle of law, on which property rests in safety, that forbids an uninterrupted possession of sixty years to be litigated at common law. The question therefore before us does not touch the competency of the Courts to try any cause, which they have a common right to try; it is merely, whether we shall continue a competency in this one case, that the law itself has taken away in every other.—And I am proud to be able to assert to that learned gentleman, that the very motive for introducing this bill, was, to save the people of Cumberland from the necessity of maintaining the inheritances they were born to, at a ruinous expence, perhaps, as fatal to themselves and their families, as the entire loss or surrender of their fortunes.

As to the precedents, of which, it is said, there are none, our history is a compendium of them. Every act, by which our ancestors vindicated the rights of the people against the power of the crown, is a precedent in point. The end and aim of every struggle for liberty has been, to reduce the regal within the limits of a legal power. Freedom of *person* and freedom of property went hand in hand together.

ther. I think, indeed, Sir, the general cause of liberty more interested in the one than the other; because, if a man should lose his personal liberty, and be confined, even to a dungeon, though he would become an object of commiseration, yet he would be rendered incapable of extending his miseries to others: but if it is ever said to a man, who is dependent for his property, *do as you are commanded, or your estate shall be taken away*; should then necessity compel him to yield, he might be not only enslaved himself, but become an active and effectual instrument in imposing slavery upon others. Magna Charta, all the forest laws from the reign of Henry the Third to the 16th of Charles the First, together with the act for abolishing the tyranny of feudal tenures at the restoration of Charles the Second, are every one of them precedents for rendering private property independent, and securing it against the attacks of the Crown. It is therefore unaccountable in gentlemen, especially of the learned profession, to object the want of precedent.

The statute of James the First, which we are endeavouring to extend to the case of the Duke of Portland, is a precedent, that, in principle, as well as fact, goes to every point of the question before us. It not only gives future quiet to the subject, but stops every law-suit then depending. The
express

expres provisions are, to secure every estate of sixty years possession, against all and every person, having, or pretending to have, any estate, right or title, by force, or colour of any letters patents, or grants, upon suggestion of concealment, or defective titles, of or for which said manors, lands, and tenements, no verdict, judgment, or decree, hath been had or given.

Let it now be remembered, who it was that introduced this bill, and carried it through the House. Sir Edward Coke was the man. Did Sir Edward Coke then think it a violation of law, to secure a possession of sixty years against the claim of the Crown? Did he call the antient property of an ancient house, the property of an informer? Did he contend for the lucre of lawyers, against the principles of law? No, Sir, the statute of King James is the brief of Sir Edward Coke's thoughts on this subject; but he did more; he has left a comment on that act, in further testimony of his opinion, and as a guide to posterity. If the learned Serjeant has not read, or has forgotten that institute, which the great master of his own science wrote, let him peruse it—I will then make *him* the judge between us, who acts up to the principles of Sir Edward Coke, and who deviates from them.

It is not so long since I moved the repeal of this clause, that the House will perhaps

perhaps endure me, if I repeat my motives for it. I must take the liberty to contradict an honourable gentleman *, who asserted, the Duke of Portland's interest was the sole ground on which we have acted. The Duke of Portland was not named, nor thought of particularly, when we heard that striking, sorrowful history of the distresses, in which so many freeholders of Cumberland were involved. Some of them, we were told, have even given up their estates, rather than stand a law-suit with so great a competitor; and the rest are in that state of suspense, which is the aggravation of misery. On *their* account I introduced the bill. The honourable gentleman has indeed assured us, that he † will withdraw all the prosecutions, except one: may he derive all the honour that such a concession merits, and may the peace he has given to others be repaid ten-fold into his own bosom! But still, Sir, I am at a loss to know, *Why* is the Duke of Portland to be excluded! What crime has he committed, so as to forfeit the protection of the law?

The answer is, *volenti non fit injuria*. His own consent binds *him*, and our assent binds *us*, to the clause. That the Duke of Portland consented to separate his cause from the public, I admit; but he did not sever himself from the justice of parliament

* Mr. Dyson.

† Sir James Lowther.

hereafter,

hereafter, as has been stated by my honourable friend *.

But allowing the Duke *did* give his consent, it shall not carry me to do injustice to those, whom his consent ought not to affect. For the estate in question is under settlement to his Dutchess in jointure, and entailed upon his son. The Dutchess, indeed, is fortunately in a way to be taken care of. For an honourable gentleman †, as authorized by Sir James Lowther, has proposed to make up her jointure out of Sir James Lowther's estate. To be sure, Sir, the kindness and generosity of taking away a man's estate, in order to make a jointure upon his wife, is very transcendent; but decency forbids me to imagine, that such a wife, of such an husband, can take a jointure from *one* who is *not* her husband.

But let me for one moment suppose the Duke of Portland as much bound by this consent, as man *can* be by any bargain whatsoever; What then was the agreement? It was as universally admitted, that the Duke of Portland should remain exposed, and others be protected.—An agreement, if broken by one party, is discharged as to the other. If therefore prosecutions *have* been commenced; if they, for whose quiet the Duke of Portland engaged to sacrifice himself, *have* been disquieted, then

* Sir George Savile.

† Governor Johnston.

is the condition void. Prosecutions have been commenced—he who commenced them has made the agreement void.

I did move the *repeal* of this clause, because I thought it should never have been in the bill. I thought the bill fit to protect *all or none*. The clause, if applied to the claims of the Crown, violates the principle of the quieting act itself; if applied to the case of subject and subject (as it does in fact, for the right of the Crown is vested in Sir James Lowther) it violates that sacred rule of law, which secures the subject, in a possession of sixty years, against every other subject. That we are bound by our former act, is an argument not to be admitted; we are as free to *repeal* as to *enact*. In all other courts there is an appeal against every erroneous judgment. In parliament, the appeals lie to parliament only—if therefore we have done wrong, and upon deliberation and revision we should persist in it, we shall shew ourselves in the very worst light in which human nature can appear. It is our lot to *err*, but to persevere in error is our crime.

My learned friend *, who sits near me, in the last day's debate on this subject, quoted a comparison of the two sorts of government, as defined by an elegant writer of antiquity, the *Imperium hominum*, and the *Imperium legum*.—*Regem hominem esse, à quo*

H

impetres

* Mr. Wedderburn, Solicitor General.

impetres ubi jus, ubi injuria opus sit. Legem, rem surdam, inexorabilem. I am as willing to rest my cause on the true application of this passage, as on the quotation from Measure for Measure, in the beginning of the debate; for I cannot define the two sorts of government better than by calling one *the law of the land*, and the other *a dispensing power in the Crown*. The former, then, is *deaf and inexorable* to any claim set up against a possession of sixty years. But *nullum tempus occurrit regi*. The King, in his own person, is exempt from every thing that is not the perfection of wisdom and goodness. But the Minister, who executes the powers of the Crown, has no rule to exert *this* power over property, but that of his own will, which may incline him to set up one man and pull down another, as each may be adverse or subservient to his purposes. My learned friend thinks all ground of complaint taken away, because those persons, who would have been real sufferers, are now exempted: according to that idea, where there is no cruelty, there is no tyranny. But I am sure, my learned friend's ideas are not so narrowed; he knows, that not the man alone who *feels*, but he who is *exposed to* tyranny, is without freedom. Tyranny is like the thunder-bolt, which strikes the oak rather than the willow; to resist it, we must protect *him* who is the object of the tyrant's stroke; the poor man is beneath it; where therefore

fore the cause of humanity *ends*, there the cause of liberty *begins*.

It is high time, Sir, that I should cease to trouble you. After being so accused of injustice and violence, I thought my defence necessary, though I am afraid it has trespassed too much upon your patience. Let me then only state how it stands betwixt *me* and my accusers. I have brought in a bill to rescue two hundred persons from oppression. In one hundred and ninety-nine instances they not only applaud, but are glad to share my merit. For extending the law to one man more, I am charged with rage, tyranny, despotism, and every appellation that denotes injustice. Let, however, those who affect to think me so unprincipled, consider how deeply they participate of my guilt; for, in respect of one hundred and ninety-nine persons out of two hundred, they stand in the same predicament as myself. But why are they *slopt* at that *one*? Is it from a genuine wish to proscribe the Duke of Portland? I acquit them of such a motive. But, alas! his Grace is no favourite at Court. The mandate is gone forth; and the Minister has proclaimed that, "*if thou let this man escape, thou art not Cæsar's friend.*"

The House divided upon the question, Whether the Speaker should leave the chair? 155 were for it, and 164 against it.

Mr. Dyson then moved to put off the Bill for three months.

The two following Letters contain a further illustration of this important matter.

To Lord NORTH.

MY LORD,

THE attention of the public having lately been recalled to the *Nullum Tempus* Bill, it was very natural to enquire into the part that your Lordship took in the progress of it; and it was not wonderful to find that the same Minister, who two years ago disgraced his constitutional principles by the most inveterate opposition to it, should now endeavour to rob the people of England of the full effects of that noble, and, I trust, immortal Bill.

But, my Lord, you must forgive an old man, when he tells you, that the low and paltry degradations of yourself, to which you have been obliged to stoop in order to carry this favourite point, are unworthy of your private character, and seriously criminal in the Minister. Personally unknown to both the contending parties, I have no necessity, nor have I much inclination, to pay them compliments: parallels are invidious. One cannot however forget that the two parties are the Duke of Portland and Sir

Sir James Lowther; both of them young men, both of large possessions, both decided in their public conduct, equally true to their principles, their connexions, and their friendships. Of their domestic characters I personally know nothing; but I confess that I have heard enough of their private lives, and have seen enough of their public conduct, to wish, as I should certainly act on the great stage of life with the noble Duke, so rather that I might pass my private hours in his society than with Sir James. Your Lordship is of a different opinion, and you feel a pride in the patronage of Sir James, that I shall not be inclined to dispute with you. But whatever might have been your zeal to serve his cause, surely you might have done it more honourably than by following the pressing advice of that illustrious inheritor of the deepest Tory blood in this country, Sir William Bagot, who emphatically conjured you to exert, in favour of Sir James, *all your ministerial influence, due or undue, fair or unfair, right or wrong*; who invoked to your assistance *every good and malignant spirit, every power in heaven or hell*:

Erecte si nequeo Superos, Acheronta movebo.

I say, you might have done better, not to have listened to so violent and unconstitutional advice, because every indifferent person must have seen, as I have done, the shameful and untrue publications in the News-papers, so critically inserted during
the

the three days preceding the last struggle in the House of Commons upon this Bill; when twice before the common and ordinary efforts of Administration had failed, as the Minister's last effort to carry into effectual execution the spirit of that exhortation, *duly or unduly, fairly or unfairly, right or wrong*. Upon future occasions you will do yourself honour, and your cause, whatever it may be, no harm, by imitating the conduct of your opponents upon this, who had the decency, the decorum, and the dignity to wait the event in silence, with a patient consciousness of their own rectitude, and the justice of their cause, without applying to the low, illiberal, and scandalous method of prejudicing the minds of men by invidious, partial, and false publications of a question then depending in an House of Parliament. I do not chuse to say much upon other more private and pointed measures of your Lordship to defeat this Bill, because I fear that too many are involved in the same guilt by their base submission to ministerial mandates; and I had rather draw a veil over them, than be obliged to expose to the world the nakedness of characters, which otherwise perhaps may escape without censure. Applause they cannot gain till their principles deserve it. But I must not pass over in total silence the unprecedented applications of a First Minister, in his own proper person, to solicit support upon this question,

question, nor the disgraceful humiliation of imploring assistance under his own hand, as well as the impeachable mandates under the threat of more than ministerial vengeance, if that assistance were withheld. It may become a Secretary of the Treasury, who is at the same time the Attorney and the Steward of Sir James Lowther, to use these arts; but coming under the hand, and from the mouth of the Minister himself, they are hateful and dangerous to the constitution, insulting to his adherents, and ignominious to himself.

But the cause was not a common one, the parties were not indifferent: No, my Lord; they were not, it is true; for the cause was the very cause, which tho' your Lordship was a chief instrument in originating, every honest Englishman to this hour abhors. It was to support that abominable grant of the Duke of Portland's estate, for the purpose of influencing an election, and of inflicting an exemplary punishment upon that firm Nobleman for his steady opposition to Tory ministers; but above all, the party was Sir James Lowther. Under such provocation, and in the service of such a patron, (for I must rather call him your patron than adherent, when it is well known that your ministry depended upon the success of this measure) I would allow you the *due* and the *fair* influence of your office. Sir William Bagot will forgive me if I can
make

make no greater sacrifice. But, my Lord, all that you have done might have been forgiven, had not this black transaction invaded the most sacred rights of friendship and of honour.—Yes, my Lord, to lend your assistance, to encourage and reward the treachery of one young man towards another, strikes deeply at the root of every thing which a good man holds in the dearest estimation. Can you take that adder to your bosom? can you trust him with your confidence, when you have seen him, in the course of the same cause, thinking it nothing to act a double part, but nobly triumphing over every feeling that binds the heart to honour and humanity?

It was not glorious enough for Mr. Charles Fox barely to contradict himself; it was reserved for him, at the opening of his life, to prove how easy and irreproachable it is under your Lordship's administration to betray his first, his nearest, and his dearest friend; to sacrifice the interests and the honour of a young Nobleman, the companion and the confidant of his private hours, at the dishonourable shrine of ministerial influence. But he too heard the lessons of Sir William Bagot; and I will do Mr. Charles Fox the justice to allow, that he is a ready scholar.

My Lord, I mention this, not so much from regret at the baneful consequence it must carry to the public character of the

Earl of Carlisle, who, at his first outset in the world, has thought it best to espouse and encourage a measure, in order to desert it afterwards with a more signal *eclat*, as from the pain it gives me to see all sense of private and public faith and honour sit so lightly on young men of birth and education. I mention it too, my Lord, to you as being *particeps criminis*. A minister, or a man of honour, would have disdained to involve himself in so perfidious a compromise. A minister, or a man of feeling or of virtue, would never wish to nurse the tender sensibility of infant minds to deeds of ignominy and reproach.

Thus might I have taken the liberty of addressing to your Lordship, as being the capital actor in this bad scene; and I hope you will not deny to those, who wish well to a vanquished party, the poor comfort of stating to the public those miserable methods by which you became the victor.

If your cause was good, and your weapons fair, the judgment of the world will go along with you. But if a question, which ought peculiarly to have continued a private question, is by any influence (*due or undue*) made more ministerial than any political contest, and has been carried only by the weight of the Ministry, and not the assenting consciences of individuals, the conduct of your Lordship as Minister, exerting that influence, must be amenable to public revision.

revision. The question being now no longer under the deliberation of parliament, my next letter shall examine the merits of the Bill itself, and refute some of the numberless falsehoods so industriously propagated, shameful in themselves, but more scandalous from the time, the manner, and the motive of their publication.

ULYSSES.

To Lord NORTH.

MY LORD,

IN my last letter addressed to your Lordship, I took the liberty of observing upon the strong methods you had used to defeat the late *Nullum Tempus* Bill. The subject of this shall be, to state what the merits of that Bill were, upon the success of which your existence as a Minister was made to depend.

The odious grant of the Duke of Portland's estate, in the county of Cumberland, having raised a general alarm in the minds of men, Sir George Savile, ever awake to the constitutional calls of his country, moved in the next session, for leave to bring in that famous bill, emphatically called *the Bill of Quiet*; by which the property of the subject was to be secured against all claims of the Crown, after sixty years uninterrupted possession.

It was natural that your Lordship, who could affix the Exchequer seal to that shameful grant, who could, without compunc-
tion,

tion, exult in the iniquitous advantage you thereby gave to Sir James Lowther in the approaching election; and who could, for such a purpose, rob a man in cold blood of the possessions of his ancestors, should exert the same unconstitutional powers to support a prerogative, of which your Lordship, and the Minister of that day, had exposed the absurdity and the tyranny, by the grant in question.

The Bill was lost. But the perseverance of a good man in a good cause is not easily shaken. Sir George Savile revived the Bill in the succeeding session; and its success at last, notwithstanding all the efforts of your Lordship, and the rest of the Administration, gave a signal proof of the constitutional spirit which will break forth, when the struggle begins between liberty and prerogative.—In the progress of the Bill, a clause was proposed by the friends of Sir James Lowther, which left to the grantees of the Crown twelve months from the 1st of January, 1769, for the prosecution of their suits. The friends of the Bill, anxious to secure to the subject, if they could, so important a law, did not hesitate in admitting the clause. They assented to the proposition, that the case of Sir James Lowther should remain untouched *by the bill then depending.*

Such was that consent, of which Sir James's friends have talked so much: and

what does it at last amount to? We agree not to touch the case of Sir James Lowther by *this bill*. Does this import an agreement (if by the way such an agreement could be made by private parties, in restraint of the powers of parliament) *never* to interpose? at *no* time, in *no* circumstances, under *no* provocations of the most flagrant abuse, or the most urgent necessity? Does it mean to say, that *all future* parliaments shall to eternity be barred from interfering, though impelled to it by the clearest justice? Do the friends of the Duke of Portland, does the whole Legislature mean to ratify, to confirm, and to sanctify that hateful grant? If these intentions neither can, nor will be attributed to the consent given, the utmost construction of it can extend no farther, than I have contended that its true sense imports, *a neutrality at that time, and in that bill, towards the question*. If the case should be found to require *future* interposition, *future* parliaments will interpose. But till the conduct of Sir James Lowther shall make it necessary for us to point at *him personally*, we will give him credit for those feelings of sense, of decency, and of remorse, that shall make it peevish to revive the memory of that odious transaction.

Have these sensations operated upon Sir James? What has been his conduct? On the last day of the year allowed him, he served

served above four hundred ejections. The county of Cumberland, from one extremity of it to the other, was in the utmost confusion. Not a man who had voted against him within the described limits of the grant, was to escape. The word was gone forth—The rebels must be sacrificed, the county must be crushed. But the alarm that was given by so extensive and unparalleled revenge, made it very soon prudent and necessary for Sir James to abandon many of those suits: and they stood then reduced to the *moderate number of fifteen bills in a court of equity, and two hundred and twenty-five suits at law.*

Your Lordship, perhaps, could see with pleasure the miseries of that devoted county. You could, perhaps, contemplate with inward satisfaction the glorious and exalted figure of Sir James Lowther, while you beheld him, with an air of triumphant dignity, *ride in the whirlwind and direct the storm.* Other ideas filled the mind of Sir William Meredith. He could not hear of the distress and confusion into which that unfortunate county was plunged by the clause alluded to, without immediately resolving to do that justice to Cumberland, which had been already shewn to every other county in the King's dominions. He therefore brought in the bill to repeal that clause.

I do not mean to enter into abstruse arguments upon the subject. In truth, it

is a subject that the plain common sense of every moderate capacity, the natural and first feelings of every generous and honest heart, must instantly decide upon. A law is made for the *general quiet of the subject*. A clause improvidently admitted (upon a principle of delicacy which subsequent events have not justified) counteracts the intention of that law, by perverting its beneficial purposes, and making it operate as a *partial* instrument of oppression, instead of securing to the *whole* kingdom the blessings it was intended to diffuse. Is not this a state of the fact? Was not the whole kingdom, Cumberland excepted, in the full enjoyment of that security which the Bill of *Quiet* was intended to procure? and was not Cumberland, and Cumberland alone, sacrificed by this clause? For, extraordinary as the fact is, it is a truth which ought to be known, and which I am sure nobody will dare to controvert, that Sir James Lowther is the single grantee of the Crown who has availed himself of this clause. There was not a man to be found, Sir James Lowther excepted, who would suffer himself to be transmitted to posterity as the last Englishman who exercised over his fellow-subjects this expiring right of barbarity.

Asbamed of proceedings which all men saw with concern, the Bill operated so far upon Sir James, that he was at last induced to offer to abandon every other suit he had begun,

begun, provided only that he might be at full liberty to prosecute with effect the *great delinquent, the Duke of Portland*.

Your Lordship's notions of equal justice reconciled you to the idea. You thought that his Grace's situation in life, and his fortune, exempted him from compassion; and that he was therefore excluded from all claim or pretension to common justice.

It is your duty, my Lord, to inform the public why that grant is acknowledged to be untenable against all but his Grace of Portland? why it is to be abandoned and renounced in every instance but in his? what there is in it, if Sir James thought it shameful and unjustifiable to proceed against the two hundred and twenty-four, that should make it honourable or just to pursue the two hundred and twenty-fifth? Sir James Lowther and your Lordship have allowed, that all traces of this detested grant should be obliterated with respect to every suit commenced, one only excepted. Have you tried those suits? Have you heard their respective merits? Can you distinguish between them, and say this man should be quieted; that man ought to be harrassed and oppressed? Yet you have said so;—for the Duke of Portland is an exception to all cases. He is not fit to have the benefit of that law (created by the severity of his particular case) which every other Englishman does actually enjoy. He *ought* to stand branded and exposed to all posterity: he
shall

shall be attainted by name: he must fall the single victim, and be made the only sacrifice for the peace and quiet of this country.

Let us then hear no more of the objection of parliamentary interposition, *pendente lite*, by an *ex post facto* law. Your Lordship heard in the proper place, and could not refute, the many precedents of laws made *ex post facto* upon urgent occasions. Your Lordship could not then, nor will now deny, that when Parliaments have interfered to protect the subject against oppressive grants, they have always done it, they must ever do it, *pendente lite*. Till the grant is put in suit, no grievance can be said to exist. The prosecutions under it are the very grievance which Parliament interposes to redress. Such was the view, and such was the effect of the bill for the general quiet of the subject in King James's time, and which Sir George Savile's was intended to pursue.— But, my Lord, you cannot avail yourself of the argument. The concession of Sir James Lowther has alone defeated it.

A grant is passed, affecting in its consequences the rights of two hundred and twenty-five persons. By a law that should be made *ex post facto*, *pendente lite*, you would deem it honourable and just to restrain Sir James Lowther from proceeding in two hundred and twenty-four of these suits. It remains for your Lordship to satisfy the world that it is honourable and just that he should proceed

ceed in the two hundred and twenty-fifth. You must do more.—You must prove that it will not be both *dishonourable and unjust* if he do, or if he be suffered to proceed in it.

When I am using the words honour and justice, I could wish, before I close my letter, to ask Sir James Lowther, under which of those ideas he advanced a fact from the best authority, the *bill itself*, (and which has since been repeated by anonymous writers) that the Duke of Portland gave the first provocation, and drew upon himself the consequence, by filing a bill in Chancery against Sir James for the recovery of a very valuable fishery that had been immemorially in his family.—The world perhaps may not know that the assertion was contradicted upon the spot, and not afterwards defended. But the world shall know what the fact truly was.

The noble Duke is possessed of a salmon fishery upon the river Eden, close to the gates of Carlisle. Sir James Lowther enjoys a very valuable one below his Grace's, nearer the sea. Sir James thought proper, contrary to immemorial practice, to adopt a new and comprehensive mode of fishing by spreading his nets quite across the river; so that it became absolutely impossible for any salmon to get up to his Grace's fishery. The Duke therefore filed a bill against Sir James Lowther to perpetuate the testimony of old witnesses, in order that Sir James

might be obliged to use his fishery as his ancestors had always done, and to exercise his rights in a manner that should not be totally destructive of his Grace's property.

My Lord, I now leave you in company with the man who could mistake, for any purpose, so clear a fact. I shall trouble your Lordship with no observations upon such conduct, because I can make none without appealing to that tribunal of Honour and Conscience, that has not been hitherto very favourable to the Duke of Portland when the Minister has presided in it, and Sir James Lowther has been the suitor.

ULYSSES.

F I N I S.

